

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YARINA MOYA,

Plaintiff,

Docket No.:
1:18-cv-5337-LAK

-against-

ANSWER

CAREY HALL and ALPHA MISSION INC.,

Defendants.

Defendants **CAREY HALL and ALPHA MISSION INC.**, by their attorneys, RAFTER AND ASSOCIATES PLLC, as and for their Answer in response to the Complaint, allege as follows:

AS AND FOR THE FIRST CAUSE OF ACTION

1. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs designated "1", "2", "17", "18", "19", "20", "21",
2. Admit the allegations contained in paragraphs designated "3",
3. Deny the allegations contained in paragraphs designated "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "23" and "24".
4. Denies the allegations contained in paragraph designated "22" and respectfully refer all questions of law to the Honorable Justice presiding at the trial of this lawsuit.

AS AND FOR THE SECOND CAUSE OF ACTION

5. Defendants repeat, reiterate and reallege each and every admission or denial heretofore made in response to paragraphs designated "1" through "24" as though fully set forth herein at length in response to paragraph designated "25".

6. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs designated "26", "44", "46", "47", "48", "50",

7. Deny the allegations contained in paragraphs designated "27", except admits that Alpha Mission Inc. maintains its principal place of business in the County of Mecklenburg, in the State of North Carolina.

8. Deny the allegations contained in paragraph designated "29", "30", and "31" except admits that Alpha Mission Inc. is the registered owner of a Freightliner Tractor, bearing North Carolina license plate number MP8284.

9. Deny the allegations contained in paragraphs designated "32", "33", "34", "37", "38", "39", "40", "41", "42", "43", "53" and "54".

10. Deny the allegations contained in paragraph designated "52" and "55" and respectfully refer all questions of law to the Honorable Justice presiding at the trial of this lawsuit.

**AS AND FOR A FIRST, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

11. That the damages allegedly suffered by the Plaintiff were caused in whole or in part by the culpable conduct of the Plaintiff herself. The Plaintiff's claims are therefore barred or diminished in the proportion that such culpable conduct of the Plaintiff bears to the total culpable conduct causing the damages.

**AS AND FOR A SECOND, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

12. The injured Plaintiff, if she may have sustained any injuries at the time and place, and upon the occasion mentioned in the Complaint, assumed the risk of sustaining same under the conditions and circumstances then existing and obvious.

**AS AND FOR A THIRD, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

13. Upon information and belief, the accident and injuries set forth in the Plaintiff's Complaint did not result in serious injury to the Plaintiff and the Plaintiff did not sustain such minimum economic loss as defined in §5102 of the Insurance Law of the State of New York. The failure of Plaintiff to prove such serious injury or economic loss is a bar to the maintenance of this action.

**AS AND FOR A FOURTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

14. That any and all medical expenses incurred by the Plaintiff, and any and all claimed lost wages, and any and all claimed economic losses have been and will be paid to the Plaintiff by a collateral source as defined in CPLR §4545(c), and, as such, these Defendants are, as a matter of law, not required to indemnify the Plaintiff, and consequently, the Plaintiff's claims are therefore extinguished or diminished.

**AS AND FOR A FIFTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

15. That the Plaintiff has failed to mitigate damages.

**AS AND FOR A SIXTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

16. That the Plaintiff has failed to state a cause of action for which relief may be granted.

**AS AND FOR A SEVENTH, SEPARATE AND
DISTINCT AFFIRMATIVE DEFENSE, THE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

17. That the Plaintiff failed to wear a seat belt and/or restraint at the time of the alleged incident.

WHEREFORE, Defendants CAREY HALL and ALPHA MISSION INC., demand judgment dismissing the Complaint against them, together with the costs and disbursements of this action.

Dated: New York, New York
June 21, 2018

RAFTER AND ASSOCIATES PLLC

By:



Howard K. Fishman, Esq. (HKF7580)
Attorneys for Defendants
CAREY HALL and
ALPHA MISSION INC.
29 Broadway, 14th Floor
New York, New York 10006
(212) 797-4362
File No.: 4600.1002

TO: KRENTSEL & GUZMAN, LLP
Attorneys for Plaintiff
17 Battery Place - Suite 604
New York, New York 10004
(212) 227-2900

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ANDREA NEGRON, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Queens County. That on the 21st day of June, 2018, deponent served the within enclosed

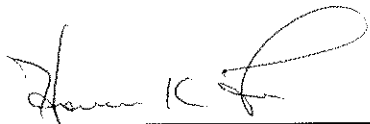
ANSWER

upon the attorneys and parties listed below by United States prepaid mail by placing same in a mailbox in the State of New York to:

KRENTSEL & GUZMAN, LLP
Attorneys for Plaintiff
17 Battery Place - Suite 604
New York, New York 10004
(212) 227-2900


ANDREA NEGRON

Sworn to before me this
21st day of June, 2018



NOTARY PUBLIC

HOWARD K. FISHMAN
Notary Public, State of New York
No. 02FI4893036
Qualified in New York County
Commission Expires April 13, 2019

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Plaintiff,

-against-

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CAREY HALL and ALPHA MISSION INC.,

Defendants.

**RAFTER AND ASSOCIATES PLLC
Attorneys for Defendants**

CAREY HALL and ALPHA MISSION INC.,

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NEW YORK, NEW YORK 10006
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ANSWER
